

**MINUTES OF THE SPECIAL MEETING OF THE  
ARIZONA STATE RETIREMENT SYSTEM BOARD**

**HELD ON  
Friday, December 21, 2001  
10 a.m. MST**

The Arizona State Retirement System (ASRS) Board met in the 14<sup>th</sup> Floor Conference Room of the ASRS office at 3300 North Central Avenue, Phoenix, Arizona 85012. Mr. Jim Bruner, ASRS Board Chairman, called the meeting to order at 10 a.m., MST.

The meeting was teleconferenced to the ASRS office at 7660 East Broadway Boulevard, Suite 108, Tucson, Arizona 85710.

**1. Call to Order; Roll Call.**

Present: Mr. Jim Bruner, Chairman (via telephone)  
Mr. Norman Miller, Vice Chairman  
Dr. Merlin DuVal (via telephone – arrived at 10:06 a.m.)  
Dr. Chuck Essigs  
Mr. Jim Jenkins (via telephone)  
Mr. Alan Maguire (via telephone)  
Mr. Karl Polen (via telephone - arrived at 10:06 a.m.)  
Mr. Ray Rottas

Excused: Ms. Bonnie Gonzalez

A quorum was present for the purpose of conducting business.

**2. Presentation, Discussion and Appropriate Action Regarding the Enron Corporation Securities Litigation.**

**Mr. Karl Polen and Dr. Merlin DuVal arrived at 10:06 a.m.**

Mr. Fred Stork, Assistant Attorney General, provided a brief summary on the litigation against Enron Corp., some of its officials, and against its outside auditing firm, Arthur Andersen.

The ASRS is a member of the class of security holders involved in the litigation. Under the federal securities laws applicable to the case, wherein the largest investors involved in the security class

action cases would be the preferred class representatives, the ASRS can be appointed a lead or co-lead plaintiff in the litigation if the ASRS chooses to apply to the District Court.

The ASRS had exposure to Enron holdings of approximately \$30 million in the equity and approximately \$5 million in the fixed income arenas. The decision before the Board is whether that loss, in relation to the total fund, warrants active or passive participation in the case. Historically, the ASRS has been a passive participant in such cases. However, the public pension sector and offices of attorneys general throughout the country have become increasingly active in the securities litigation arena.

A pension fund in Georgia would like to be the lead plaintiff in the Enron case and is inviting other funds to be co-lead plaintiffs or serve on an executive committee that would advise the lead plaintiff and the Court. The Arizona Attorney General's office, over the past 10 years, has developed a unit of attorneys and financial experts, particularly in the accounting arena, who have been involved in investigating actions similar to the Enron case. The Arizona attorney general is interested in contributing the state's expertise to the case in order to insure all of the issues are investigated adequately and the class members receive the maximum benefits from the outcome. The states of Ohio, Texas, Illinois, and California have also expressed interest in participating but have taken no action. The other pension funds in Arizona are currently evaluating their portfolios to determine their exposure and will also be considering their level of participation.

Mr. Stork analyzed the advantages and disadvantages of the ASRS' participation in the litigation as a co-lead plaintiff or on the executive committee: 1) It is uncertain whether it would increase the recovery to the ASRS fund; 2) Having public funds serve as lead plaintiffs theoretically controls the cost of the attorney's fees and diverts more of the recovery to the funds; 3) The Attorney General's Office will cover the costs of the litigation, leaving no burden on the ASRS fund.

Mr. Paul Matson, Chief Investment Officer, reported that the ASRS has had Enron assets in its portfolio for a number of years, and the class action will cover the period from October 18, 1998, to November 30, 2001, for determining losses. He also provided a timeline of the market status of Enron, noting that the ASRS exposure in December 2000 consisted of holdings of approximately \$50 million (or approximately one-quarter of one percent of the total fund). The ASRS fund managers have sold most of the Enron assets so that the retained holdings have a market value of approximately \$1 million as of December 21, 2001.

Mr. Terry Dennison, Principal, Mercer Consulting Inc. commented that there are numerous causes for action, including the issuance of false and misleading statements by management and misrepresentation of balance sheets by the external auditors. The public funds that have the most holdings are likely to take the lead in the case, but it is not clear whether those funds will assume some liability to the other class members for proper management of the case. Mr. Stork confirmed that, in theory, there is exposure if the lead plaintiffs mishandle the litigation and are found to be inadequate representatives, but he is not aware of any cases where a class representative has been found negligent in this arena.

Mr. Stork also advised, although it was relatively short notice, a motion must be filed with the Court

in Houston by close of business this day, if the ASRS wants to participate as a lead in the case.

Mr. Ray Rottas asked what other major participants would be involved. Mr. Stork reiterated that Georgia, which had about \$40 million in exposure, wants to take the lead. He also noted that Florida had high exposure, but he did not have information on other states. He informed the Board that the federal securities laws limit the number of times an entity may be a lead plaintiff, and larger states like California and New York have taken the lead in other cases.

Mr. LeRoy Gilbertson, Director, asked whether the mutual funds firms would be involved. Mr. Dennison answered that they would have significant holdings, but they do not typically assume the lead role, as the large public funds have a better relationship with the plaintiffs' bar that pursues these types of cases.

Mr. Rottas asked what the fees, costs, and liabilities would be, not just to the ASRS but also to the State of Arizona. Mr. Stork answered that the monetary cost to the ASRS is negligible, given the attorney general's commitment to cover whatever costs may arise. Active involvement would only require the ASRS staff time to evaluate holdings and losses to help prepare the claim. With regard to cost to the state, the attorney's fees are contingent on the amount of recovery. Again, theoretically, liabilities could exist, but Mr. Stork does not believe there is a real exposure to it. There is no guarantee of a better recovery for the ASRS as an active plaintiff or representative. However, given the reliance of employers/employees on the pension programs in which they are enrolled, misdeeds by large corporations ought to be dealt with severely, and state governments are in a position to take a public stance against illegal conduct in civil litigation and send a message on behalf of other pension plans.

Mr. Karl Polen asked if some securities holder has to file a claim in order for there to be a civil claim for reimbursement for security holders who were harmed. Mr. Stork answered yes. Mr. Polen stated that the matter before the Board, then, is whether the ASRS, especially in a case where Arizona does not have to take the lead, should take its turn as a co-lead plaintiff. Mr. Polen also asked if any attorney's fees would be covered across the class or if Arizona have an additional burden as a lead. Mr. Stork replied that any fees would be contingent on recovery and would be distributed across the class, but he could not provide the specifics of the arrangement the attorney general's office would make. Mr. Norman Miller expressed his belief that the details of such an arrangement would be an important factor in determining the level of participation. He also clarified that the private attorney would act only as consultant and help prepare filings but the attorneys general would take the lead in the direction and strategy of the case.

Mr. Alan Maguire pointed out that based on the discussion thus far, it appears the Board does not really know the consequences of its decision. He does not believe the question is one of monetary cost to the ASRS, but rather one of the reputation of the ASRS. The Board has worked diligently to keep the system above engaging in political or social statements in its investment and administrative practices. He believes there are more than adequate federal regulations to pursue the kind of illegal activities suggested in the Enron case. He also believes it is a mistake for the Board to put the ASRS reputation at stake and make such an important decision on such short notice. He also questioned who would really benefit from the state's involvement and noted it is unlikely the

litigation will end quickly so the promise of no cost to the ASRS is somewhat meaningless. Mr. Miller asked whether the ASRS Board has a fiduciary duty to be an active plaintiff in the case. Mr. Stork answered that if there was a large enough financial stake, and if the Board felt assured that active participation would enhance the recovery to the fund or bring another value, such as publicity, to the case, the Board has a duty to at least consider active participation. He noted that Mr. Matson had reported that total recovery in class action litigation cases has been approximately \$200,000 for the ASRS per year.

Mr. Miller asked what resources the Attorney General's Office had that would enhance the outcome of the case. Mr. Stork responded that the office has several attorneys with experience and expertise in such cases, particularly in the accounting arena. Mr. Miller asked if the ASRS Board would have to approve any settlement. Mr. Stork confirmed it would.

Mr. Karl Polen asked for clarification as to whether, if the Board becomes lead plaintiff, it will have to make decisions about whether or not to accept a settlement and make a judgement on its propriety. Mr. Stork answered yes. Mr. Polen expressed his belief that the Board has a civic duty to take on the burden of being a lead plaintiff from time to time, but expressed concern that the Board would have to spend too much time on a case that only involves 15 basis points of the value of the fund instead of concentrating on more important strategic decisions for the fund. He also proposed that the Investment Review Board Committee (IRBC) hold a meeting within 60 days to consider a policy to determine circumstances under which the ASRS would become an active participant in such cases.

**Motion:** Mr. Karl Polen moved that the ASRS not join as a co-lead plaintiff nor a representative of the executive committee in the class action litigation now pending against Enron Corporation and others for violations of federal securities laws.

Mr. Alan Maguire seconded the motion.

Mr. Ray Rottas commented that he is not satisfied with the level of determining what gains the ASRS would achieve or the costs or liabilities it would incur, and for this reason he can not justify voting for participation without the opportunity or time to gather all the necessary information.

Mr. Polen articulated the reasons for his motion not to pursue active participation in the case. He noted that the ASRS will join the class as a plaintiff and will receive its fair share of the settlement. The Board has evaluated the situation and there are already several large and capably-represented entities that will competently pursue the matter. It does not appear that the ASRS' participation as co-lead will significantly affect the outcome. The Board received notice of a consideration to become a co-lead plaintiff before it had the opportunity to develop a policy on how to become a co-lead plaintiff and under what circumstances. The Board will work on constructing a policy in the near future.

Mr. Miller asked if it was possible to ask the Court in Texas for additional time to gather more information. Mr. Stork responded that the deadline is at close of business this day and the Court will not grant an extension.

Mr. Stork reminded Board members they have a duty to vote, rather than abstain, unless they have a conflict of interest in the issue under consideration.

By a vote of 8 in favor, 0 opposed, 0 abstentions, 1 excused, the motion was approved.

### **3. Board Requests for Agenda Items**

There were no requests for future agenda items from Board members.

### **4. Call to the Public.**

There were no requests to speak from the Phoenix or Tucson public.

### **5. The next ASRS Board meeting is scheduled for Friday, January 18, 2002 at 8:30 a.m. in the 10<sup>th</sup> Floor Board Room of the ASRS office at 3300 North Central Avenue, Phoenix, Arizona 85067-3910.**

### **6. Adjournment of the ASRS Board.**

Mr. Jim Bruner adjourned the December 21, 2001 meeting of the ASRS Board at 11:23 a.m.

Respectfully submitted,

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Maurah Harrison, Secretary

Date

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LeRoy Gilbertson, Director

Date